

## **Exhibit 38**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re: Cae No:

RESIDENTIAL CAPITAL, LLC, et. al, 12-12020(MG)

Debtors.

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VIDEOTAPE DEPOSITION OF TIMOTHY DEVINE

New York, New York

November 19, 2012

10:17 a.m.

Reported by:  
ERICA L. RUGGIERI, RPR  
JOB NO: 27973

1 TIMOTHY DEVINE

2 Q. I'm not asking you to speculate.  
3 I'm asking you to tell me at the time that  
4 you were preparing to provide this  
5 waterfall presentation to Ms. Patrick in  
6 connection with proposed settlement with  
7 her, wasn't it your understanding that AFI  
8 in return for whatever contribution it  
9 would be making to that settlement was  
10 going to require releases from both the  
11 PLS claimants as well as ResCap?

12 A. Couple -- couple points in  
13 response. One, I wasn't preparing the  
14 waterfall.

15 Two, we were not negotiating,  
16 Kathy Patrick and me -- Kathy Patrick and  
17 I with regard to whether or not the 750  
18 would be consideration for anything that  
19 the debtor received in connection with the  
20 resolution of a debtor and Kathy Patrick  
21 settlement agreement.

22 Q. Weren't those things all being  
23 negotiated together, Mr. Devine?

24 A. The 750 was not being negotiated  
25 with Kathy Patrick.

1 TIMOTHY DEVINE

2 A. Okay. So as I recall sitting  
3 here today, the estimated nonwrapped  
4 potential exposure beyond 2013 represented  
5 estimated lifetime losses, which I'm  
6 testing with the note here, multiplied by  
7 risks post fund audit defect rates  
8 adjusted for litigation defenses. Risk  
9 referred to Todd Kushman's group. And so  
10 that would have been -- what I don't  
11 remember is nonwrapped potential exposure  
12 beyond 2013, whether that would have  
13 included anything beyond private label  
14 securities nonwrapped potential exposure.  
15 I just don't remember.

16 Q. The next line under Additional  
17 Items says "Adj. for application of defect  
18 rate at a nonloan level for nonwrapped PLS  
19 and additional provision for wrapped PLS."

20 Do you see that?

21 A. I see it, yeah.

22 Q. And that shows an adjustment of  
23 \$500 million upwards for nonwrapped and  
24 wrapped PLS exposure, right?

25 A. Well, it represents application

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2 of a defect rate of a nonloan level for  
3 those populations.

4 Q. Okay. And the next line under  
5 Additional Items says "Potential  
6 investor/securities litigation." Do you  
7 see that?

8 A. Yes, I see it.

9 Q. Is the amount shown for that  
10 item \$400 million, the estimate of  
11 exposure for securities fraud claims at  
12 that point?

13 A. No.

14 Q. Okay. What does it represent?

15 A. As I sit here today, my memory  
16 is that it represents the estimated top  
17 end of the range of reasonably possible  
18 losses for ResCap over time related to  
19 litigation and -- repurchase obligation of  
20 related claims. Meaning, as I understand,  
21 that would have been subject to certain  
22 stresses beyond what the estimated  
23 exposure would have been.

24 Q. Mr. Devine, I was only focusing  
25 on the line that says "Potential

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2 Q. And is the e-mail above that  
3 your response to Mr. Lee?

4 A. Yes. That's what it looks like.

5 Q. Mr. Lee referred to a call or  
6 meeting with Ms. Patrick that day. And  
7 you said our notes match. Were you and  
8 Mr. Lee both on a call with Mr. Patrick --  
9 sorry -- with Ms. Patrick on May 4th?

10 A. I -- I don't remember. What --  
11 what I do remember is that Gary Lee was  
12 having a variety of conversations with  
13 Kathy Patrick during that period, some of  
14 which I would have been included on and  
15 some of which I wouldn't have been  
16 included on.

17 Q. Well, he was summarizing in an  
18 e-mail what Ms. Patrick had proposed that  
19 day. And you said, "Our notes match." So  
20 you must have been on that call, right?

21 MR. PRINCI: Objection as to  
22 form.

23 A. Yeah, might. The reason I  
24 clarified my answer is that it could be  
25 that he was summarizing calls or meetings

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2 Q. Yes.

3 A. No, she did not indicate that to  
4 me.

5 Q. Did she indicate that it was  
6 important?

7 A. Yes.

8 Q. Okay. What did she say about  
9 that?

10 A. Kathy Patrick understood that  
11 the negotiation of a dollar number between  
12 AFI and ResCap was going on separately  
13 from the discussions over the RMBS  
14 settlement. Notwithstanding that, she  
15 understood that she had no direct role  
16 or -- or standing to bargain for a number  
17 there since the number -- since that  
18 agreement was between the estate and Ally.  
19 She did care about the number and she told  
20 me that she cared about the number for the  
21 obvious reason that she wanted to maximize  
22 that figure from Ally Financial.

23 Q. But as of May 4th, had she  
24 expressed an amount that she expected from  
25 AFI if she were going to proceed with a

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2 stalking horse for the -- for a certain  
3 class of assets that were being offered  
4 for sale in the estate. But -- but I  
5 confess, I didn't know what it was then  
6 and frankly I don't know what it is now.

7 Q. What did you mean by 100 for  
8 originations?

9 A. Similar answer. I understood  
10 that the teams working on the Ally and  
11 ResCap settlement had come up with this  
12 sort of shorthand to represent what I was  
13 made to understand was the Ally cash  
14 contribution to the Ally and ResCap  
15 settlement, which is the settlement to  
16 which this sentence here refers. "Assume  
17 750 Ally cash plus 200 for HFS plus 100  
18 for originations constitute the Ally" cash  
19 contribution to the settlement. That's  
20 the Ally ResCap settlement that's being  
21 described. And as I said before, I really  
22 did not participate in or have any  
23 responsibility in working on that, those  
24 settlement discussions.

25 Q. Who was it that gave you those

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2 A. In connection with the  
3 resolution with Kathy Patrick, no.

4 Q. Were you -- okay. So what you  
5 just said is incorrect, right? It had  
6 nothing to do with your advising the  
7 client on that number. I'm asking you  
8 whether you were comfortable as Ally's  
9 lawyer with an \$8.7 billion number based  
10 on the information Mr. Cancelliere gave to  
11 you in his May 9th e-mail?

12 MR. PRINCI: Objection as to  
13 form.

14 MR. BRYAN: Objection as to  
15 form.

16 A. That's how I understood your  
17 question.

18 Q. Right, okay. So that was the  
19 client, AFI?

20 A. Correct.

21 Q. Okay. Do you recall one way or  
22 another whether an \$8.7 billion allowed  
23 claim had been agreed to as of May 9th,  
24 2012, at 7:17 a.m.?

25 A. Do I recall that right now

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2 Q. Okay. Did there come a time  
3 when you learned who it was, what  
4 individuals were negotiating a settlement  
5 between ResCap and AFI?

6 A. Yes.

7 Q. Okay. When did you learn that?

8 A. I don't remember when I learned  
9 that.

10 Q. Did you learn it before or after  
11 the ResCap board gave its approval to the  
12 settlement with Kathy Patrick?

13 A. I don't know.

14 Q. Okay. What individuals did you  
15 come to learn negotiated the settlement  
16 between AFI and ResCap?

17 A. Well, I may or may not be  
18 correct but you are asking me for my  
19 understanding. It was Mike Carpenter for  
20 AFI with the independents of the ResCap  
21 board.

22 Q. During the course of the  
23 negotiations with Ms. Patrick, up until  
24 May 9th, weren't you -- weren't you being  
25 kept advised about the progress of

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2 conversations were moving on from sort of  
3 rep and warrant general conversations to  
4 agreements that would take meaning within  
5 the concept of a bankruptcy, I was  
6 indicating that I am not bankruptcy expert  
7 and would not be the right person to  
8 negotiate terms of an agreement in that  
9 context.

10 I would have thought that given  
11 the population of the recipients of this  
12 e-mail I sent, that Gary Lee would have  
13 picked up the conversation with Talcott  
14 Franklin. And it looks like at the top of  
15 this Exhibit 148 that that's exactly what  
16 happened. That Gary Lee responded and  
17 said we can send him a revised agreement  
18 and PSA when we get next draft from KP.

19 MR. KAUFMAN: Let's mark as  
20 Exhibit 149 an e-mail chain on  
21 May 9th, 2012. Bates numbers RC  
22 9019\_00049216 and 9217.

23 (9019 Exhibit 149, e-mail chain  
24 on May 9th, 2012, Bates RC  
25 9019\_00049216 and 9217, marked for

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2 identification, as of this date.)

3 A. Thank you.

4 Q. Directing your attention to the  
5 first e-mail in the chain, which appears  
6 at the bottom of the first page and goes  
7 over to the top of the second page. Did  
8 you receive that e-mail from Mr. Schrock?

9 A. It looks like I did.

10 Q. Mr. Schrock wrote in this  
11 e-mail, "And, Gary, as you know, the pure  
12 cash number in the settlement agreement as  
13 plan sponsor is \$750 million. I do not  
14 want this lost in translation among the  
15 group, please."

16 Do you see that?

17 A. Yes, I do.

18 Q. Do you know why Mr. Schrock  
19 wanted to make that clear to Mr. Lee?

20 MR. BRYAN: Object to form.

21 MR. PRINCI: Objection as to  
22 form.

23 A. No, I don't know why he wanted  
24 to make it clear.

25 Q. Did you receive Mr. Lee's

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2 response at 10:01 a.m. on May 9th?

3 A. It looks like I did.

4 Q. There Mr. Lee ~~REDACTED~~ "That's what

5 I gather. Also we are allocating 10

6 percent to LLC only." Do you see that?

7 A. I do see that.

8 Q. Did you understand Mr. Lee's

9 reference to LLC was to Residential

10 Capital, LLC?

11 A. I don't recall whether I

12 understood that to mean that.

13 Q. As you sit here today, do you

14 understand it now?

15 A. I should tell you that I did not

16 consider myself responsible for any

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2 REDACTED

3 Q. Right. Nevertheless, four  
4 minutes later you responded to Mr. Lee  
5 with an e-mail that said "And the setoff  
6 curve ball must be waived, no value."  
7 Right?

8 A. That's what it looks like.

9 Q. Are you saying that you were  
10 able to send that e-mail without  
11 understanding what Mr. Lee was talking  
12 about in the e-mail to which you  
13 responded?

14 MR. PRINCI: Objection to form.

15 MR. BRYAN: Objection as to  
16 form.

17 A. What I will tell you is that it  
18 was made known to me at some point, and if  
19 these numbers -- if these times are  
20 correct, at some point on either Tuesday,  
21 May 8th, Wednesday, May 9th, that there  
22 was some sort of a setoff argument being  
23 advanced by, I assume it was by either  
24 Kathy Patrick or Talcott Franklin or one  
25 of the counterparties and as I sit here

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2 A. Well, I sent an e-mail to Gary  
3 Lee, Jamie Levitt, Noah Ornstein and John  
4 Ruckdaschel, cc'd Cieri and Schrock at  
5 4:29.

6 Q. Right. And you sent that e-mail  
7 in response to Mr. Lee's e-mail at 4:26 on  
8 May 12th, didn't you?

9 A. Yeah, I'm not sure if it's in  
10 response but I did send him an e-mail a  
11 couple minutes later.

12 Q. And you wrote, "Got it. Had  
13 call with KP. We told her PSA support  
14 whole hog is drop dead." That's what you  
15 wrote, right?

16 A. That's what I wrote.

17 Q. And is that what you told  
18 Ms. Patrick?

19 A. I don't remember if I told her  
20 whole hog but if I read this sitting here  
21 now, it looks like I was communicating to  
22 that group that I told her that she had to  
23 support the PSAs in full. And that that  
24 was a provision that Ally would insist on  
25 to the extent Ally could insist on

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2 anything.

3 Q. And by using the phrase "drop  
4 dead" you meant it was nonnegotiable from  
5 Ally's perspective, right?

6 A. I meant that if she wanted our  
7 participation in the PSA she needed to  
8 support it.

9 MR. KAUFMAN: Let's mark as the  
10 next exhibit an e-mail chain on  
11 May 13, 2012 between Mr. Devine and  
12 Talcott Franklin.

13 (9019 Exhibit 155, e-mail chain  
14 dated May 13, 2012 between Mr. Devine  
15 and Talcott Franklin, marked for  
16 identification, as of this date.)

17 A. Okay.

18 Q. Looking at the first e-mail in  
19 this chain which starts at the bottom of  
20 the first page, did you send that e-mail  
21 to Mr. Franklin at 12:16 p.m. on  
22 May 13th -- I'm sorry -- at 1:28 p.m. on  
23 May 12th?

24 A. It looks like I did. Again, I'm  
25 not sure of the timing but it looks like I

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2 represent clients who did or did not under  
3 the relevant documents have contract  
4 claims against ResCap. And that was  
5 natural because I had been dealing with  
6 that kind of assertion of claim, although  
7 not by investors and trustees but rather  
8 by the monolines against the ResCap  
9 entities theretofore.

10 At some point ResCap began to  
11 consider a Chapter 11 restructuring. I  
12 did not represent ResCap at all in  
13 connection with this Chapter 11  
14 restructuring, unless you consider the  
15 nature of our discussions according to the  
16 common interest or joint defense privilege  
17 in which case that's why I don't blame you  
18 for misunderstanding the nature of what I  
19 just talked about. But so, yes, I did  
20 represent ResCap in connection with the  
21 sort of bilateral claim of Kathy Patrick's  
22 clients against the ResCap entities and  
23 rep and warrant. Once the context of the  
24 restructuring became a part of that  
25 dialogue, ResCap was represented by Gary

1 TIMOTHY DEVINE

2 Lee of MoFo. I never represented ResCap  
3 on a bankruptcy related resolution. At  
4 least unless you -- as I say, I did  
5 continue to advise ResCap in connection  
6 with plain sort of legal analysis on rep  
7 and warrant issues but not so much as  
8 would be implicated in connection with the  
9 filing.

10 Q. Thank you for that and let me  
11 try to make sure I understand correctly.  
12 To try to summarize. In the beginning of  
13 from October for some period of time in  
14 the initial stages that you've described  
15 as essentially information gathering  
16 stages, you were representing ResCap. By  
17 the end, by the April and May time period  
18 that we have looked at a variety of  
19 e-mails by that time period you were no  
20 longer representing ResCap, you would have  
21 solely been representing AFI, is that  
22 correct, am I bracketing the change in  
23 role correctly?

24 A. No. I think you are missing one  
25 part of it. But it's -- it's